

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) PROPOSED RULEMAKING FOR SECTION 108(b)

CERCLA § 108 (b)

What is the CERCLA Section 108(b) Financial Responsibility Initiative?

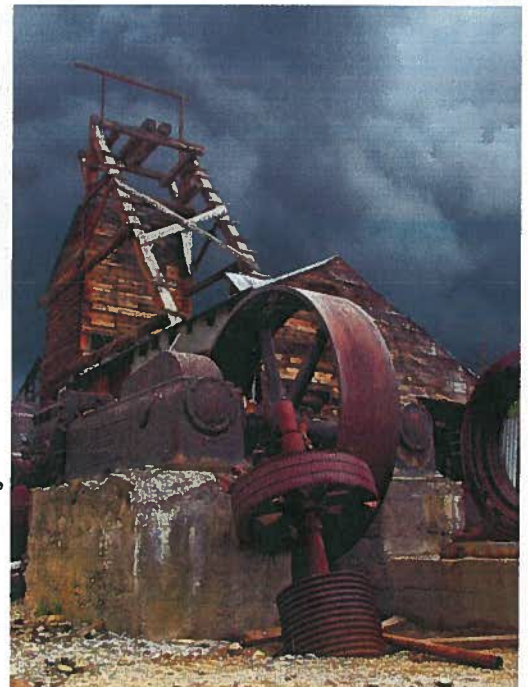
In 1980 Congress enacted the Superfund law (actually named the *Comprehensive Environmental Response, Compensation, and Liability Act*, or “CERCLA.” Section 108(b) of CERCLA directed the president to impose financial responsibility requirements for classes of facilities “consistent with the degree and duration of risks associated with the production, transportation, treatment, storage or disposal of hazardous substances.” EPA is fulfilling this requirement by developing CERCLA Section 108(b) regulations for parts of certain industry classes, starting with hard rock mining. EPA published a *Federal Register* notice in July, 2009, defining hard rock mining as classes which “extract, beneficiate or process metals (e.g., copper, gold, iron, lead, magnesium, molybdenum, silver, uranium, and zinc) and non-metallic, non-fuel minerals (e.g., asbestos, gypsum, phosphate rock, and sulfur).” Coal mining is not included.

What are Financial Responsibility Requirements?

Evidence of financial responsibility may be established by: insurance, guarantee, surety bond, letter of credit, and/or qualification as a self-insurer. EPA has committed to carefully examine specific activities and processes of its targeted classes to determine what, if any, financial responsibility requirements may be appropriate. EPA also is committed to considering federal, Tribal and State authorities, policies, and practices that already require assurance of financial responsibility. CERCLA also provides that EPA should impose financial responsibility requirements as quickly as can reasonably be achieved, but not later than four years from the date we publish our rule and, where possible, via incremental, annual increases in the requirements.

Why Hard Rock Mining?

2007 Toxic Release Inventory (TRI) data show enormous quantities of hazardous substance releases from hard rock mining classes, which also have a significant presence on the National Priorities List of “Superfund” sites. Of 1,635 sites proposed, listed or deleted as of October, 2007, 90 (7%) are mining and/or smelting sites. And, reports in 2004 by EPA’s Inspector General, in 2005 by the Government Accountability Office, and in 1999 and 2005 by the National Research Council all draw attention to mining.



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What's next?

In February, 2012 EPA expects to publish in the *Federal Register* proposed financial responsibility regulations for hard rock mining. Before EPA develops final regulations for the proposal, we will request public comments. If we then decide to produce a final rule for hard rock mining, we expect to publish it in September, 2013.

In January, 2010 EPA published another *Federal Register* notice, naming as additional priority classes portions of the Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Electric Power Generation, Transmission, and Distribution industries. EPA has not yet developed a schedule to regulate these additional classes.

What is my role?

EPA is committed to engaging people in communities in proximity to hard rock mines, including tribal communities and communities in Indian Country, so that they have the opportunity to discuss and influence the environmental decision-making process. We will use a variety of communication tools and possibly listening sessions in various locations. We would like the names of community contacts interested in learning more about EPA's plans and providing comments. We want to engage Tribal governments, and we trust that you will carry this message to your Tribal leaders. If you don't feel comfortable doing so, or if your Chairman would prefer a personal regulation, please send us a briefing on this an email so that we can arrange one.



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Helpful links:

<http://www.epa.gov/EPA-WASTE/2009/July/Day-28/fl6819.htm>

<http://www.regulations.gov/#!documentDetail;D=EPA-HQ-SFUND-2009-0265-0048>

